

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-215228

**DATE:** April 12, 1985

**MATTER OF:** Reconsideration of Johnny M. Jones

**DIGEST:** An employee requested reconsideration of our decision, Johnny M. Jones, 63 Comp. Gen. 531 (1984), denying his claim for temporary quarters subsistence expenses while occupying an apartment under a 1-year lease. The employee has presented evidence indicating that the lease he signed could have been cancelled without penalty if, as was his intent, he purchased a condominium unit in the same complex. While the execution of a 1-year lease under these circumstances may not necessarily evidence an intent to remain in the apartment for the full term of the lease, the employee's intent to purchase a residence at some future time, contingent upon the sale of his former residence, is too indefinite to change the character of the rented quarters from permanent to temporary. Prior decision is affirmed.

Mr. Johnny M. Jones has requested reconsideration of our decision holding that he was not entitled to temporary quarters subsistence expenses, contending that the 1-year lease he signed could have been cancelled without penalty if, as he intended to do, he purchased a condominium in the same complex.<sup>1/</sup> While the signing of a 1-year lease under these circumstances is not necessarily determinative of an intent to remain in rented quarters on other than a temporary basis, an intent to purchase a residence at some

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<sup>1/</sup> Mr. Robert E. Hughes, a certifying officer with the U.S. Customs Service, Department of the Treasury, has forwarded the appeal of Johnny M. Jones, requesting reconsideration of our decision, Johnny M. Jones, 63 Comp. Gen. 531 (1984).

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future time is otherwise insufficient to establish that the rented quarters were temporary rather than permanent. The disallowance of Mr. Jones' claim for temporary quarters subsistence expenses, therefore, is sustained.

#### BACKGROUND

Mr. Johnny M. Jones, an employee of the U.S. Customs Service, was transferred from Miami, Florida, to Boston, Massachusetts, in June 1983. He was authorized a house-hunting trip and 30 days' temporary quarters subsistence expenses. Mr. Jones did not make a house-hunting trip and upon his arrival in Massachusetts signed a 1-year lease at Sagamore II Apartments in Quincy, Massachusetts. He claimed temporary quarters subsistence expenses for the first 30 days he occupied that apartment. In Johnny M. Jones, 63 Comp. Gen. 531 (1984), we held that Mr. Jones was not entitled to temporary quarters expenses where the record did not indicate that he intended to occupy that apartment temporarily.

In his request for reconsideration Mr. Jones cites several factors that he feels evidence his intent to occupy the apartment on a temporary basis. He states that he declined to take the authorized house hunting trip and thereby saved the Government an unnecessary expense. He indicates that because his former residence in California had not been sold he did not have sufficient funds to make a downpayment on a new residence at the time of his transfer to Boston. At that time, however, his realtor had informed him that there were good prospects for selling his California residence. He, therefore, chose to rent at Sagamore Towers planning to purchase there upon the sale of his house in California.

Sagamore Towers consists of two 12-story buildings. Sagamore II, where Mr. Jones rented, is an apartment building. Sagamore I is a condominium complex. One of the advantages of renting at Sagamore Towers is a policy under which the lease of a tenant living in Sagamore II will be cancelled without penalty upon purchase of a unit in Sagamore I. Although this feature is not reflected in the lease itself, Mr. Jones has supplied a statement from the Sagamore Realty Trust II verifying that this is the lessor's policy. Thus, Mr. Jones requests reconsideration of our prior decision on the basis that he initially occupied the apartment in Sagamore II with an intent to remain there only until he could purchase a condominium.

ANALYSIS

Section 5724a(a)(3) of title 5, United States Code (1982), is the statutory authority under which transferred employees are reimbursed temporary quarters subsistence expenses. The implementing regulations are found at chapter 2, part 5 of the Federal Travel Regulations (FTR) (Supp. 4, August 23, 1982), 41 C.F.R. § 101-7.003 (1983). Under FTR para. 2-5.2c temporary quarters subsistence expenses may be paid even though the quarters an employee occupies ultimately become his permanent residence, provided the agency can establish that the original intent was to occupy those quarters temporarily. See 47 Fed. Reg. 44,567 (1982).

In Johnny M. Jones, 63 Comp. Gen. 531, *supra*, we denied Mr. Jones' claim for temporary quarters subsistence expenses on the basis that the record did not support a finding that he intended to occupy the apartment at Sagamore II on a temporary basis. In reaching that conclusion we relied, in part, on the fact that he had entered into a 1-year lease, noting that in general the execution of a 1-year lease is a clear indication that an employee intends to occupy the rented quarters on other than a temporary basis.

Based on the additional information he has provided, we agree that Mr. Jones has demonstrated that his signing a 1-year lease was not necessarily evidence of an intent to remain in the rented apartment for the term of the lease. However, we cannot agree that his intention to purchase a different residence upon the sale of his California residence was sufficient otherwise to establish the temporary character of the rented quarters.

Whether quarters are permanent or temporary is not a matter susceptible of precise definition. That determination must be based on the facts of each case. While the regulations permit reimbursement of temporary quarters subsistence expenses in situations where an employee's temporary quarters later become permanent, generally we have declined to consider an employee's intent to purchase a residence at some future time as establishing the character of quarters occupied in the interim. John W. Blanton, Jr., B-205112, February 9, 1982, and Richard W. Coon, B-194880, January 9, 1980. Those situations are to be contrasted with cases in which the transferred employee actively pursues the location of a permanent residence. Robert D. Hawks, B-205057, February 24, 1982, and Charles J. Wilson, B-187622, June 13, 1977.

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In Mr. Jones' case it appears that his former residence in California had not been sold at the time of his June 1983 transfer to Boston even though he had transferred to Miami in October 1982. We do not find the fact that his real estate agent indicated that he had a prospective purchaser or purchasers, even when combined with Mr. Jones' desire to purchase a unit in Sagamore I upon the sale of the house in California, sufficient to change the character of the apartment he rented in Sagamore II from permanent to temporary quarters. See John W. Blanton, Jr., B-205112, supra, where we denied reimbursement of temporary quarters subsistence expenses for the employee's occupancy of an apartment under a month-to-month lease although the employee purchased a house 11 months later.

Finally, we note that Mr. Jones states that he saved the Government money by not taking a house hunting trip which had been authorized. The fact that an employee does not take a house-hunting trip and may in fact save the government money is not a basis upon which to allow reimbursement for subsistence expenses incurred in occupying quarters which were not temporary. Henry W. Whitley, B-198026, March 24, 1983.

Accordingly, since we find that Mr. Jones' occupancy of the rented unit of Sagamore II was not temporary in nature within the meaning of the Federal Travel Regulations, the decision of August 15, 1984, is affirmed.

*for* Nancy R. Van Clave  
Comptroller General  
of the United States